

**REMARKS**

The Applicants request reconsideration of the rejection.

Claims 1 and 3-20 remain pending.

Claims 1, 5 and 12 have been amended to further distinguish the invention from the prior art applied in the Final Rejection dated February 21, 2006, as discussed more fully below.

Claim 16 has been amended to remove a possible redundancy.

In the Final Rejection, claims 1-2 and 4 were rejected under 35 U.S.C. §102(b) as being anticipated by Schuster et al., U.S. Patent No. 6,243,846 (Schuster). In a Reply filed September 21, 2006 (resubmitted October 23, 2006), claim 2 was canceled and its subject matter added to claim 1. The Applicants argued the patentability on claim 1 based primarily on the subject matter added from claim 2. The Applicants refer the Examiner to the Remarks accompanying that Reply and incorporate those remarks by reference herein.

In an Advisory Action mailed November 28, 2006, the Examiner indicated that the addition of the subject matter from claim 2 did not place claim 1 in condition for allowance. In particular, to the argument distinguishing the claimed management unit for managing FEC redundancies each provided for a transmission partner connected to the network, the Examiner argued that "FEC inherently features redundancy information within packets for the transmission node" and that the redundancy in FEC "are held for transmission partners inherently."

However, the Examiner cites no authority supporting the alleged inherency. The Examiner must provide rationale or evidence tending to show inherency. Manual of Patent Examining Procedure (MPEP) §2112(IV). "To establish inherency,

the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. . . . The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robinson*, 169 F3d 743, 745, 49 USPQ 2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

Further, "in relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art." *Ex parte Levy* 17 USPQ 2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). (Emphasis in original.)

To the argument that Schuster fails to teach the storage of catalog redundancy, cataloged for each transmission partner, the Examiner asserts that Schuster's design inherently includes memory means within which to store data while it is being handled, but does not address the argument that the redundancies are cataloged for each transmission partner in the present invention. Similar arguments can be made to support the other glosses in the remarks accompanying the Advisory Action.

Nevertheless, claim 1 has been further amended in this paper to recite that the management unit manages as to whether or not a transmission partner is a target of an FEC communication, and manages FEC redundancies each provided for a transmission partner connected to the network. Further, claim 1 has been amended to recite that an iSCSI packet group is managed corresponding to the transmission partner. Schuster neither discloses nor fairly suggests these added limitations of claim 1.

Claims 3 and 5-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schuster in view of Chui, U.S. Patent Publication No. 2002/0165978 (Chui). Again, the Applicants incorporate by reference the Remarks accompanying the prior Reply after final rejection, and address the Advisory Action as follows.

In the Advisory Action, the Examiner seems to assert that the Applicants have not argued Chui in combination with Schuster as set forth in the rejection. However, necessarily, once Chui is distinguished as to the features for which it is applied in the combination rejection, the combination rejection must fall. Further, because Schuster was already distinguished, any combination with Chui motivated by their respective teachings must also fall.

In addition, the Advisory Action seems to assert that Chui's teaching of "the existence of iSCSI" renders it combinable with Schuster, by definition, without any evidence to why the person of ordinary skill would think to combine Chui's teachings with Schuster to reach the invention claimed in the rejected claims. The Applicants note that the Advisory Action states, "It can be shown that the encoder/decoder devices of Schuster's design can have iSCSI." However, the rejection does not show that the encoder/decoder devices of Schuster can have iSCSI according to Chui, or that the alleged resulting devices would meet the limitations as claimed. If there is no prima facie case of obviousness, the burden does not shift to the Applicants. Respectfully, the Final Rejection does not establish a prima facie case of obviousness with regard to claims 3 and 5-20.

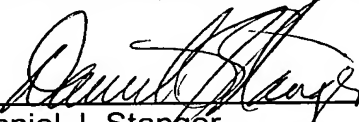
Nevertheless, independent claim 5 has been amended to further limit the reception management table so as to require the table to be used for cataloging and

managing iSCSI data depending on whether or not a transmission partner is a target of an FEC communication and managing FEC redundancies each provided for a transmission source connected to the network. Further, claim 13 has been amended to require that, in the management unit, an iSCSI packet group is managed corresponding to a transmission partner. Thus, in addition to the distinguishing features previously argued (and already set forth in those claims that were not amended above), the Applicants request reconsideration of the rejection of claims 3 and 5-20 over Schuster in any motivated combination with Chui.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Mattingly, Stanger, Malur & Brundidge, P.C., Deposit Account No. 50-1417 (referencing attorney docket no. 520.42989X00).

Respectfully submitted,

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